

ASSEMBLY BILL

No. 1676

Introduced by Assembly Member Bowen

January 14, 1998

An act to amend Section 17538.4 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1676, as introduced, Bowen. Advertising: electronic mail.

Existing law prohibits a person conducting business in this state from faxing unsolicited advertising material, unless certain conditions are satisfied.

This bill would expand that prohibition to include the transmission of unsolicited advertising by electronic mail, and would make several related changes.

Existing law provides for the regulation of advertising and provides that a violation of those provisions is a crime. This bill, by creating additional prohibitions with regard to advertising, would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17538.4 of the Business and Professions Code is amended to read:

17538.4. (a) No person or entity conducting business in this state shall fax or cause to be faxed *or electronically mail or cause to be electronically mailed* documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number which a recipient of the unsolicited faxed *or electronically mailed* documents may call to notify the sender not to fax *or electronically mail* the recipient any further unsolicited documents.

(b) All unsolicited faxed *or electronically mailed* documents subject to this section shall include a statement, in at least 9-point type, informing the recipient of the toll-free telephone number the recipient may call, and ~~an~~ *a valid return address to which the* recipient may write ~~to~~ *or electronically mail, as the case may be*, notifying the sender not to fax *or electronically mail* the recipient any further unsolicited documents to the fax number, or numbers, *or electronic mail address, or addresses*, specified by the recipient.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed *or electronically mailed* documents, no person or entity conducting business in this state shall fax or cause to be faxed *or electronically mail or cause to be electronically mailed* any unsolicited documents to that recipient.

(d) Any violation of subdivision (c) is an infraction punishable by a fine of five hundred dollars (\$500) for each and every transmission.

(e) As used in this section, “fax” or “cause to be faxed” *or “electronically mail” or “cause to be electronically mailed”* shall not include or refer to the transmission of any documents by a telecommunications utility *or Internet service provider* to the extent that the

1 telecommunications utility *or Internet service provider*
2 merely carries that transmission over its network.

3 SEC. 2. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

13 Notwithstanding Section 17580 of the Government
14 Code, unless otherwise specified, the provisions of this act
15 shall become operative on the same date that the act
16 takes effect pursuant to the California Constitution.

